In the Court of Appeal
of the Democratic Socialist Republic of Sri Lanka

In the matter of an Application for a mandate in the nature of Writs of Certiorari and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

G.L.U. Sanjeewa Godawatte,
No. 179, Tissa Mawatha,
Wijayapura,
Anuradhapura.

Petitioner

Vs.

CA (Writ): 92/2019

1. **National Police Commission**
   Building No. 9,
   Bandaranaike Memorial
   International Conference Hall,
   Bauddhaloka Mawatha,
   Colombo 7.

   And 13 others

Respondents

Before: Hon. Justice Yasantha Kodagoda, PC,
President of the Court of Appeal
Hon. Justice Arjuna Obeyesekere
Judge of the Court of Appeal

Counsel: Prince Perera for the Petitioner.

Supported on 10th June, 2019.

Written Submissions of the Petitioners submitted on 25th July, 2019.
Written Submissions of the Respondents submitted on 29th July, 2019.

Order delivered on 8th November 2019.

Order

<u>Hon. Justice Yasantha Kodagoda, PC, President of the Court of Appeal</u>

This Order relates to whether or not formal Notices of this Application should be issued by this Court on the Respondents. The Petitioner seeks mandates in the nature of Writs of Certiorari and Mandamus against the Respondents.

Position of the Petitioners and submissions made on his behalf

On 18th December 1989, the Petitioner had joined the Police Department as a Reserve Sub Inspector. On 30th July 2002, at a time when the Petitioner was attached to the Anuradhapura Police Station, the services of the Petitioner had been discontinued by Deputy Inspector General (I) of the Anuradhapura District, on account of his having allegedly forwarded a false report in respect of the issue of a firearm license to a civilian. Subsequently, the Petitioner and a Grama Seva Niladhari had also been produced in the Magistrate's Court of Anuradhapura in case No. 9850 for having committed four offences in that regard. After trial, while the Petitioner had been found *guilty* of having committed all three offences alleged to have been committed by him, the Grama Seva Niladhari had been found *guilty* of having committed the fourth offence. The Petitioner had been fined Rs. 1,500/= and a default sentence of 6 months imprisonment had been imposed.

The Petitioner had appealed to the High Court against his conviction and sentence. The High Court had by judgment dated 23rd June 2011 while allowing the appeal, *acquitted* the Petitioner.

Subsequently, on 25th October 2012, the Petitioner had appealed to the Public Service Commission against his 'suspension of service'. In response, the Secretary of the Commission had informed the Petitioner that the Commission had decided not to intervene in the matter. Aggrieved by the said decision, the Petitioner had preferred an appeal to the Administrative Appeals Tribunal. In its observations regarding the appeal, the Public Service Commission has taken up the position that the deletion of the name of the Petitioner from the enlistment (Roll of Police Reservists) without affording an opportunity to the Petitioner to explain matters was unlawful. In the meantime, the National Police Commission (1st Respondent) was established by law, and it assumed the position being the disciplinary authority. The National Police Commission Respondent had submitted an objection relating to the Petitioner's Appeal to the Administrative Appeals Tribunal, and had taken up the position that the Petitioner cannot be reinstated.

Before the Administrative Appeals Tribunal, the Petitioner had taken up the following positions:

(i) That the Petitioner's suspension is per-se illegal, due to the fact that, the deletion of the Petitioner's name from the Roll of Police Reservists was not done by an officer who had the authority to do so.
(ii) A formal disciplinary inquiry had not been held.
(iii) The Petitioner can be absorbed to the regular police service.
(iv) Officers similarly placed as the Petitioner had been granted reinstatement.

The Administrative Appeals Tribunal by its order dated 2nd October 2018, dismissed the Appeal of the Petitioner.

The Petitioner alleges that, due to the following questions of law not having been considered by the Administrative Appeals Tribunal, its Order is *'erroneous on the face of the record'*:

i. The suspension of the Petitioner's service is per-se illegal, as his services were suspended by a Superintendent of Police, whereas, it should have been suspended by the Commandant on an order of the Inspector General of Police.
ii. The Public Service Commission had concluded that the curtailment of the Petitioner's name from the Roll of Reserve Police Officers was illegal.
iii. The de-listing of the Petitioner's name from the Roll of Reserve Police Officers was illegal as due to non-compliance with the rules of natural justice.
iv. No disciplinary inquiry had been held against the Petitioner.
v. The Petitioner has been denied of his legitimate expectations.

The Petitioner has also submitted that the Petitioner can now be absorbed to the Regular Police service. It was also submitted on behalf of the Petitioner, that officers similarly placed have been granted reinstatement with back wages.

Consideration of the available material, applicable law and findings of the Court

Consideration of document marked before the Administrative Appeals Tribunal as "App.01" which has been attached to the Petition, reveals that by letter dated 30th July 2002 addressed to the Petitioner and signed jointly by a Superintendent of

Police in his capacity as the Director (Personnel Control) of the Reserve Police Headquarters and the Deputy Commandant of the Reserve Police Headquarters, on a consideration of a Report submitted by Deputy Inspector General of Police (in charge of the Division 1 - Anuradhapura), the Petitioner had been placed on interdiction. This letter reveals the allegation against the Petitioner, namely that he neglected his duty and submitted a false investigation report pertaining to the matter relating to the obtaining of a new firearm license by one R.W.M.H.B. Rajakaruna.

Document marked "X2" which is an attachment to document marked "P2" is a certified extract of Magistrate's Court Anuradhapura Case No. 9850. An examination of the said extract reveals that, the Officer-in-Charge of the Special Crimes Investigation Unit of Anuradhapura had instituted criminal proceedings against the Petitioner and one Herath Mudiyanselage Gunapalage Gunasena (hereinafter referred to as 'Gunapala') in the Magistrate's Court of Anuradhapura. A consideration of the charges leveled against the Petitioner and the other accused, reveals that, it had been alleged by the prosecution that the Petitioner had committed offences in terms of sections 163, 175 and 457 of the Penal Code for having (i) fabricated a false statement of one Shiromala Priyadharshani indicating that Rajakaruna Wasala Mudiyanselage Heenbanda Rajakaruna (the applicant for an extension of a firearms license) was a person of bad character, (ii) obtaining a false certificate from Gunasena, who was a Grama Seva Niladhari, regarding the residency of the afore-named Rajakaruna and, (iii) submitting as genuine the afore-stated documents to the Headquarters Inspector of Anuradhapura. These offences are said to have been committed by the Petitioner on 4th January 2002. The underlying allegation was that, the Petitioner had engaged in such conduct to prevent an extension of the firearms license of the said Rajakaruna Wasala Mudiyanselage Heenbanda Rajakaruna for the year 2002. The fourth charge was one of abetment, and that was against Gunasena for having abetted the Petitioner.

It is evident that, these charges relate to the matter in respect of which the Petitioner had been interdicted on 30th July 2002. Following trial, the learned Magistrate found both accused *guilty* as charged, convicted and sentenced the Petitioner and the other accused.

The Petitioner has Appealed against his conviction and sentence to the High Court of the North Central Province holden in Anuradhapura. During the appeal hearing, learned State Counsel for the Respondent – Attorney General has submitted that, the sentence imposed on the Petitioner and the afore-stated Gunasena in respect of the 2nd, 3rd and 4th counts were not lawful. In the circumstances, the learned High Court Judge has on 11th June 2011 vacated the sentence imposed on the Petitioner and *discharged* him with regard to counts 2 and 3, and *discharged* Gunasena with regard

to count 4. It is to be noted that, the learned High Court Judge has not quashed the *conviction* of the Petitioner in respect of those counts, and has merely vacated the sentences imposed by the learned Magistrate. Thus, a question arises as to whether the *discharge* of the Petitioner is 'lawful'. Furthermore, if in fact, as submitted by the learned State Counsel, the sentences imposed on the Petitioner and Gunasena were 'unlawful' (and the learned State Counsel has in his submissions not adverted to reasons for his view on the matter), this Court wonders why the learned High Court Judge did not quash such 'unlawful sentences' and impose on the Petitioner and Gunasena sentences that were 'lawful' and appropriate. Be that as it may, it is pertinent to note that, the learned High Court Judge had not *acquitted* the Petitioner and Gunasena of counts 2, 3 and 4.

As regards the 1st count, delivering Judgment on 23rd June 2011, the learned High Court Judge has considered the evidence and *acquitted* the Petitioner. Thus, the Appeal of the Petitioner against his conviction and sentence had been allowed by the learned High Court Judge. There is much that can be commented upon regarding the appellate findings of the Provincial High Court. However, this Court refrains from doing so, as the duty of this Court in considering this Application is not to sit in judgment over the ruling given by the Provincial High Court.

By letter dated 26th July 2011 (marked 'App. 03', which is an attachment to document marked 'P2'), the Petitioner has presented an appeal to the Inspector General of Police seeking reinstatement in service. He has also pleaded that, he be absorbed to the Regular service of the Sri Lanka Police with retrospective effect, on the basis that, since 2nd January 2006, officers who were in the Sri Lanka Police Reserve, had been absorbed into the Regular service. The position of the Petitioner is that, he did not receive any response to the appeal submitted to the Inspector General of Police. A consideration of the documents attached to the Petition reveals otherwise, and a reference to that is made in the next paragraph.

By letter dated 7th June 2012, the Inspector General of Police has issued a directive to Director Personnel of the Sri Lanka Police, and copied it to the Petitioner. Attendant circumstances reveal that, this directive is a response to the Petitioner's appeal to the Inspector General of Police. An examination of this directive, also reveals that the Inspector General of Police has taken into consideration the *acquittal* of the Petitioner of the criminal charges against him. He has however concluded that, due to previous blemishes of the Petitioner and his having served only 7 ½ years in the Police Reserve (prior to his suspension), and due to a policy decision taken by the National Police Commission, it would not be possible to reinstate the Petitioner. He has thus directed that, the Petitioner be demobilized and his name struck-off from the Roll of Police Reservists. It is to be noted that, the Petitioner

has not sought judicial review of the afore-stated directive of the Inspector General of Police.

By letter dated 25th October 2012 (marked 'X5', which is an attachment to document marked 'P2') the Petitioner has submitted an appeal to the Public Service Commission. It appears that, the Petitioner has also presented a complaint to the Human Rights Commission of Sri Lanka.

The Petitioner has attached to the Petition a copy of a Circular No. RTM 1002 dated 25th February 2006 issued on behalf of the Inspector General of Police by Senior Deputy Inspector General of Police (Administration) captioned 'Scheme for absorption of Reserve Police Officers to the Regular Cadre'. It states that, a decision had been taken to absorb 'Reservists' of all ranks to the General Cadre of the Regular Police Service in their respective ranks with effect from 24th February 2006. It is evident that, the absorption was to be a onetime event, as opposed to an ongoing process. It states the minimum qualifications that a Reservist should have to be eligible for absorption. One such qualification is that, he should have been in active service in the Reserve Cadre for a minimum of 8 years. Clause 10 of the Circular provides that, those who are not eligible due to pending cases in courts and disciplinary inquiries will be kept in the reserve list until such time the inquiries are completed. It further provides that, if such personnel are exonerated / acquitted from their charges / cases, their absorption will be effected from the due dates. If they are found *guilty* and awarded punishment whatsoever, their absorption will be considered depending on the result of the inquiry / case.

By letter dated 17th October 2014 (a copy of which is marked 'X9' and has been attached to document marked 'P2'), the Public Service Commission has responded to the afore-stated Appeal of the Petitioner. It states that, the Public Service Commission had considered the material placed before it by the Petitioner and the Ministry of Defence, Law & Order and Urban Development, and had decided (a) not to intervene at that point of time with regard to the appeal of the Petitioner, and (b) to inform the Inspector General of Police to provide to the Petitioner reasons as to why the Petitioner's name had been deleted from the Roll of Reserve Police Officers. It appears that, when arriving at the afore-stated decision, the Public Service Commission has taken into consideration observations submitted to it through the Ministry of Defence, Law & Order and Urban Development by the Inspector General of Police. In the said observations dated 27th May 2013, the Inspector General of Police has pointed out reasons which resulted in the interdiction of the Petitioner, and that, no disciplinary inquiry was held into the conduct of the Petitioner, since during the relevant era, disciplinary inquiries were not conducted into impugned conduct of Police Reservists. It has also been pointed

out that, in addition to the impugned behavior of the Petitioner that resulted in his being placed on interdiction, in 1990, 1991 and 1998, the Petitioner had been placed on suspension, due to various previous acts of indiscipline. The Inspector General has also pointed out that, as the Police Reserve was no longer in existence, it was not possible to enlist the Petitioner once again into the Police Reserve, and that due to the Petitioner having been in the Police Reserve only for a period of 7 ½ years and in view of his past blemishes, it was not suitable to absorb him to the regular service. It would be noted that, in terms of the afore-stated Circular, to be eligible for absorption to the Regular Service, the required minimum period of service in the Reserve cadre was 8 years. Thus, the Petitioner falls short of the minimum qualifications stipulated in afore-stated Circular No. RTM 1002. The Inspector General of Police has also pointed out that, a period of 11 years had lapsed following the Petitioner having been placed on suspension.

Aggrieved by the decision of the Public Service Commission, on 8th April 2015, the Petitioner has appealed to the Administrative Appeals Tribunal. In response to the said Appeal, the National Police Commission has presented its observations by letter dated 11th August 2016. (These observations have been produced marked 'P4'.) It should be noted that, by this time, in terms of Article 155G of the Constitution, the National Police Commission had replaced the Public Service Commission as the appointing cum disciplinary authority of police officers.

Having considered the material placed before the tribunal and the oral and written submissions of the Petitioner and those of the National Police Commission, the Administrative Appeals Tribunal has on 2nd October 2018 pronounced its Order. That is the Order which the Petitioner seeks to impugn through this Application. While dismissing the Appeal, the Administrative Appeals Tribunal has arrived at the following findings:

(a) Since the Petitioner was a Reserve Police Officer, he had no right of appeal to the Public Service Commission.
(b) In terms of Section 26(B)(1) of the Police Ordinance, there is no provision to inform a Reserve Police Officer before the Inspector General strikes of his name from the Roll of Reserve Officer Officers.
(c) Notwithstanding the acquittal of the Petitioner of the criminal charges against him, the Inspector General of Police has on a consideration of several factors including several previous blemishes of the Petitioner, deemed him to be unfit for absorption into the regular police service.
(d) At the time the Inspector General of Police struck off the Petitioner from the Reserve Roll (as contained in letter dated 7th June 2012), he was aware

that the Petitioner had been *acquitted* of criminal charges, but had nevertheless deemed him to be unfit to serve in the regular police service.

(e) The Petitioner has not challenged in terms of the law the decision of the Inspector General of Police dated 7th June 2012.

It would thus be seen that, the Administrative Appeals Tribunal has given careful consideration to the Appeal of the Petitioner. The Tribunal has identified several grounds upon which the Appeal of the Petitioner should be dismissed.

It is to be noted that, this is an Application by which the Petitioner seeks a mandate from this Court in the nature of a Writ of Certiorari to quash the afore-stated decision dated 2nd October 2018 of the 1st Respondent - Administrative Appeals Tribunal. The Petitioner has also sought a Writ of Mandamus to direct the absorption of the Petitioner to the Regular Service of the Sri Lanka Police and for reinstatement with effect from 3rd July 2002. It would be seen that, for the Petitioner to be successful in moving this Court to consider the issue of the Writ of Mandamus, he must first be successful in having the order of the Administrative Appeals Tribunal dated 2nd October 2018 quashed by a Writ of Certiorari.

The Administrative Appeals Tribunal Act No. 4 of 2002 does not confer on any person a right of appeal against any decision of the Administrative Appeals Tribunal. Furthermore, Section 8(2) of Act No. 4 of 2002 provides that a decision made by the Tribunal shall be final and conclusive and shall not be called in question in any suit or proceedings in any court of law. However, it is settled law that, notwithstanding such finality and ouster clause, a person aggrieved by a decision of the Tribunal may seek judicial review from this Court by way of Writ, as it is a Constitutional remedy. Similarly, recourse to the Fundamental Rights jurisdiction of the Supreme Court would also be possible. However, what is important to note is that, in the guise of seeking judicial review of the impugned decision of the Administrative Appeals Tribunal, the Petitioner cannot convert these proceedings into an appellate hearing. His critique of the impugned order of the Administrative Appeals Tribunal must be confined to the scope of judicial review in Applications seeking a mandate in the nature of the Writ of Certiorari. It is necessary for this Court to protect itself from being used as an additional layer of appeal (which is not provided by law) in the thin guise of an Application seeking a Writ. The dispute resolution process pertaining to disputes between the management of the Police and police officers in terms of the existing law should end with a final appeal to the Administrative Appeals Tribunal.

As regards the relief prayed of, i.e. a Writ of Certiorari, this Court has taken into consideration the following:

(a) The Petitioner has not pointed out any ground upon which it can be concluded that the Administrative Appeals Tribunal had in the consideration of the Appeal presented to it, acted *ultra-vires* its statutorily conferred powers. In fact it is evident that, in the consideration of the Appeal presented to it by the Petitioner, the Administrative Appeals Tribunal had in fact acted intra-vires its powers.

(b) The Petitioner has failed to establish that the Administrative Appeals Tribunal had acted in breach of the Rules of Natural Justice or violated any other procedural or substantive legal requirement in the consideration of the Appeal presented to it by the Petitioner.

(c) There is no material indicative of the Administrative Appeals Tribunal having not taken into consideration any relevant fact or having taken into consideration any irrelevant fact.

(d) The decision of the Administrative Appeals Tribunal is cogent, and is based on reasons that cannot be validly impugned. It is rational and based on the attendant facts and circumstances.

(e) The Petitioner cannot claim that he had a legitimate entitlement to obtain redress, since the Petitioner does not possess the required minimum qualifications to be absorbed into the Regular service of the Sri Lanka Police. Further, this Court cannot also overlook the fact that, the Petitioner has a blemished history, which certainly makes him unfit to appointment as a police officer. Only persons with utmost integrity and high moral standing are fit to be appointed as police officers. Thus, the Petitioner is not a person who is eligible for consideration to be appointed to the Regular Police Force.

Thus, there exists no basis in law of fact, to favourably consider the grant of the Writ of Certiorari to quash the impugned decision of the Administrative Appeals Tribunal.

In any event, the Inspector General of Police has in 2012, struck-off the Petitioner's name from the Roll of Reserve Police Officers. He has by now been out of the Police service for 17 years. In all the said circumstances, it is the view of this Court that, the Petitioner is not a fit person for the reinstatement to the Sri Lanka Police Service.

In the circumstances, this Court is of the view that the Petitioner has not satisfied the initial threshold requirement of establishing a prima-facie case that warrants this Court to issue formal Notice of this Application to the Respondents.

Therefore, this Court dismisses this Application. No order is made with regard to costs.

Justice Yasantha Kodagoda, PC,
President, Court of Appeal

I agree.

Justice Arjuna Obeyesekere
Judge of the Court of Appeal